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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 194

HYDROCARBON PRODUCTION COMPANY, INCORPORATED,

Petitioner,

vs.

VALLEY ACRES WATER DISTRICT, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

VICTOR W. BOULDIN,
Counsel for Petitioner.

HENRY LAUDERDALE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 194

HYDROCARBON PRODUCTION CO., INC.,
Petitioner,

vs.

VALLEY ACRES WATER DISTRICT, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on April 27, 1953 (R. 65), affirming the judgment of the District Court of the United States for the Southern District of Texas in favor of Respondents (R. 32, *et seq.*) and dismissing Plaintiff's complaint.

Opinions Below

The memorandum opinion of the District Court appears in the record (R. 32, *et seq.*). The opinion of the Court of Appeals is reported at 204 F. 2d 212, *et seq.* (R. 55, *et seq.*).

Jurisdiction

The judgment of the Court of Appeals was entered April 27, 1953 and rehearing was denied on May 25, 1953 (R. 69). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). The Court of Appeals has decided a Federal question in conflict with applicable decisions of this Court, particularly *Myles Salt Company* v. *Iberia & St. M. Drainage District*, 239 U. S. 478, 484, 485, 60 L. Ed. 392, 396, 36 S. Ct. 204, and the other decisions mentioned below.

Question Presented

The sole question presented is:

Whether, since under the admitted facts, Petitioner's properties will not be benefited in any degree, directly or indirectly, by the proposed irrigation facilities, and the Legislature of Texas acted arbitrarily and grossly abused its discretion in making a finding of benefits and in authorizing the imposition of annual taxes upon Petitioner's properties which are palpably wrong and wholly unwarranted, constitutes confiscation of Petitioner's properties without due process of law contrary to the Fourteenth Amendment.

Statute Involved

The Act creating Valley Acres Water District appears at Page 418, Chapter 261, Session Laws of the 52nd Legislature of Texas, 1951, and may be found in Volume 21, Page 279, *et seq.*, of the 1952 Pocket Part of Vernon's Annotated Revised Civil Statutes of Texas. Since this statute is summarized and the pertinent parts are copied in the opinion of the Court of Appeals, recopying here is omitted.

Statement

By filing a motion to dismiss, which was sustained by the District Court and affirmed by the Court of Appeals, Re-

spondents admit all of the facts alleged in the complaint as construed most favorably to Petitioner. With a few omissions, these admitted facts are summarized in the opinion of the Court of Appeals. The complaint appears at R. 2-14.

The Executors of the Estate of Roger Lacy, deceased, about the year 1949, sold approximately ten thousand acres of land owned by the Estate in Hidalgo and Cameron Counties, Texas, in three parts as follows (R. 20):

> The surface estate and certain mineral royalties were sold to a corporation controlled by Toddie Lee Wynn, of Dallas, Texas;
>
> An irrigation system serving a portion of said tract of land was sold to another corporation controlled by Mr. Wynn; and
>
> The leasehold estate in all oil, gas and other minerals was sold to Petitioner, Hydrocarbon Production Co., Inc., a Delaware corporation, created by a Houston group for the express purpose of purchasing and developing such leasehold estate.

Some two years later, Wynn and his associates "lobbied" through the Texas Legislature a Bill creating Valley Acres Water District, an irrigation district, composed of Wynn's land and a few small tracts adjacent thereto, totalling 10,202.58 acres. (See Section 1 of Special Act) (R. 20-21).

The Legislature found that "all of the land included therein will be benefited thereby" (R. 57). This finding is contrary to the facts, is not supported by substantial evidence, is palpably wrong and the Legislature of Texas acted arbitrarily and grossly abused its legislative discretion in making the finding (R. 4). Petitioner's leasehold estate in the oil, gas and other minerals is not the type of property which is susceptible of irrigation and is not now, and can never be, benefited in any degree by whatever

irrigation facilities Respondent District may construct or acquire (R. 7).

Respondent District has taken steps to issue $1,000,000 bonds to purchase the existing irrigation system from Wynn's corporation and to extend irrigation facilities to the unirrigated portion of Wynn's land (R. 5). Its governing body has adopted resolutions purporting and attempting to levy taxes upon all taxable property within the District, including the property of Petitioner, to pay principal and interest on said bonds, said taxes to be collected annually in each of the years 1951 through 1982, or until said bonds are finally paid. Respondents are threatening to, and will unless restrained, enforce the collection of such taxes by foreclosing a purported tax lien on Petitioner's property and causing such property to be sold to satisfy said purported tax lien (R. 5-6).

Reasons for Granting the Writ

The decision of the Court of Appeals is directly in conflict with the following decisions of this Court:

Myles Salt Co. v. *Iberia & St. M. Drainage District,* 239 U. S. 478, 60 L. Ed. 392, 36 S. Ct. 204;

Gast Realty & Invest. Co. v. *Schneider Granite Co.,* 240 U. S. 55, 60 L. Ed. 392, 36 S. Ct. 254;

Kansas City Southern R. Co. v. *Road Improvement District,* 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 254;

Branson v. *Bush,* 251 U. S. 189, 64 L. Ed. 220, 40 S. Ct. 113;

Thomas v. *Kansas City S. R. Co.,* 261 U. S. 481, 67 L. Ed. 758, — S. Ct. —;

Wagner v. *Leser,* 239 U. S. 207, 219, 60 L. Ed. 230, 237, 36 S. Ct. 66.

The controlling point overlooked by the District Court and the Court of Appeals is that in this case it is undis-

puted that the imposition of the tax upon Petitioner's property is palpably wrong, arbitrary, wholly unwarranted, and the Legislature of Texas grossly abused its discretion in authorizing it. The legislative finding of benefits to all taxable property within the taxing district, including Petitioner's subsurface mineral estate, is not supported by substantial evidence, is contrary to the facts, and runs counter to the very nature of such mineral estate which is located in the bowels of the earth thousands of feet below the surface and beyond the purview of irrigation, present or prospective. The subjection of this mineral estate, which was segregated from the surface estate long before the creation of the irrigation district, to the payment of irrigation taxes is solely for the purpose of benefitting Wynn's property without one single cent of benefit ever accruing to Petitioner's property. *These facts are admitted.*

This Court has uniformly held that such arbitrary exercise of the taxing power offends due process and constitutes confiscation. *Myles Salt Co.* v. *Iberia & St. M. Drainage District, Gast Realty & Invest. Co.* v. *Schneider Granite Co., Kansas City Southern R. Co.* v. *Road Improvement District, Branson* v. *Rush, Thomas* v. *Kansas City S. R. Co., Wagner* v. *Leser;* all *supra.* In the *Myles Salt Co.* case, it was held that a subsurface deposit of salt could not be benefitted by the drainage improvement of the local improvement district and that taxation of that deposit and the surface estate which also could not be benefitted, was arbitrary action and therefore unconstitutional. Said the Court (239 U. S. 485):

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for

the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner* v. *Leser*, supra. We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others,—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

In *Wagner* v. *Leser, supra*, the Court said (239 U. S. 219-220):

"We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of landowners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise."

The facts in this case reveal such a flagrant abuse of legislative power that intervention of a Court of equity to protect the constitutional rights of Petitioner is fully warranted. Justice and good conscience require it. The segregation of the mineral estate prior to the sale of the surface to Wynn and prior to the creation of the District; the removal of the irrigation system from taxation by sale to the District; the issuance of $1,000,000 bonds to finance the purchase (at an exorbitant price [R. 9]) of the system by the District from Wynn, and its extension to serve the remainder of Wynn's land; the trebling of the value of Wynn's land (R. 8) with no benefit whatever to Petitioner's property; the taxation of Petitioner's property

for the admitted and obvious purpose of benefitting Wynn's land; the failure of the District to evaluate or assess Petitioner's properties before the bonds are issued and the resultant inability of Petitioner to measure its tax liability to the District (which may exceed 50% of the total tax roll of the District) (R. 10-11); the conspiracy on the part of Wynn and associates to prevent Petitioner from being afforded a hearing before the committee of the Texas Senate on passage of the Bill creating the District and from being heard by the Directors of the District on the exclusion of Petitioner's properties from the taxing power of the District (R. 10); and the scheme and plan of Wynn to compel Petitioner to pay a large share of the cost of irrigating Wynn's land, *all of which are admitted,* are enough to shock the conscience of a court of equity and require the intervention of this court to protect Petitioner's property from this unwarranted and unconstitutional confiscation.

It is accordingly urged that a Writ of Certiorari to review the judgment of the Court below should be granted.

Respectfully submitted,

VICTOR W. BOULDIN,
Counsel for Petitioner.

HENRY LAUDERDALE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

NO. 194

HYDROCARBON PRODUCTION COMPANY, INCORPORATED

PETITIONER

VS.

VALLEY ACRES WATER DISTRICT, ET AL.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

Opinion Below

The memorandum opinion of the United States District Court for the Southern District of Texas appears in the record. (R. 32-48.) The findings of fact and conclusions of law set forth in the memorandum opinion were adopted as findings of fact and conclusions of law and ordered filed as such in the order dismissing the case. (R. 48-49.) The opinion of the Court of Appeals (R. 55-65) is reported at 204 F. (2d) 212-219.

Jurisdiction

The Court of Appeals denied a petition for rehearing on May 25, 1953. The petition for writ of certiorari was filed in this Court on July 22, 1953. Petitioner has invoked the jurisdiction of this Court under 28 U.S.C., Section 1254(1).

Question Presented

Does the provision of the special act of the Texas Legislature creating Valley Acres Water District directing the levy of an ad valorem tax on all property within such District for the purpose of paying the cost of the project, amount to confiscation of the mineral interests of petitioner in lands within the District, without due process of law, in violation of the Fourteenth Amendment, particularly in view of the fact that the legislature made an express finding that said property would be benefited?

Statute Involved

The Act of the 52nd Texas Legislature creating Valley Acres Water District appears in Session Laws of the 52nd Legislature of Texas, 1951, Chapter 261, at Page 418. This Act may also be found in Vernon's Revised Civil Statutes of Texas, Volume 21, 1952 Pocket Part, Pages 279-281. The full text of the Act appears in Appendix A (17-24) of this brief.

Statement

The Legislature of Texas in 1951 acting expressly under the provisions of Section 59 of Article XVI of the Constitution of Texas (Appendix B, 25) created by special act a conservation and reclamation district embracing 10,202.58 acres, more or less, within Hidalgo and Cameron Counties to be known as Valley Acres Water District. The Legislature incorporated in the Act creating the District a finding that "all of the land included therein would be benefited thereby" (Appendix A, 23) and required that the Board of Directors "levy a continuing ad valorem tax upon all property within the District sufficient in amount to pay the interest on such bonds and the principal thereof." (Appendix A, 22.)

The ownership of the leasehold estate in the oil, gas and other minerals, in, on and under more than 75% of the lands situated in respondent irrigation district is vested in petitioner. (R. 4.) No assessment rolls or tax rolls were prepared by respondent irrigation district at the time petitioner's complaint was filed nor had petitioner or any other property owner in the District been requested to pay any tax assessment. (R. 10-11.)

Argument

In considering the question presented, this Court must proceed on the proposition that the District has been organized validly for a public purpose. *Houck v. Little River Drainage District*, 239 U. S. 254, 60 L. Ed. 266, 36 S. Ct. 58. The District in question is a conservation and reclamation district as defined and authorized by the provisions of Section 59 of Article XVI of the Constitution of the State of Texas (Appendix B, 25). The announced public policy of Texas in connection with the matter is so clearly defined by such constitutional provision as to require no further mention.

The right of a state legislative body to make a conclusive finding of benefits in creating an irrigation district has been many times upheld by this Court. *Browning v. Hooper*, 269 U. S. 396, 70 L. Ed. 330, 46 S. Ct. 141, involved a road district created in Texas not by the Legislature of Texas but by the County Commissioners' Court under a general law authorizing them to establish such districts. As in the instant case certain taxpayers brought a suit to restrain the issue or sale of bonds and the levy of any tax to pay such bonds, seeking relief on the ground that the creation of the road district and the enforcement of the tax would deprive them of their property without due process of law. The Supreme Court in holding that the taxpayers were entitled to a hearing on benefits, stated that this hearing

would not have been available to them had the road district been created by special legislative act. This language is used:

> "Where a local improvement territory is selected, and the burden is spread by the Legislature, or by a municipality to which the state has granted full legislative powers over the subject, the owners of property in the District have no constitutional right to be heard on the question of benefits. Valley Farms Co. v. Westchester, supra; Hancock v. Muskogee, 250 U. S. 454, 459, 39 S. Ct. 528, 63 L. Ed. 1081; Withnell v. Construction Co., 249 U. S. 63, 69, 39 S. Ct. 200, 63 L. Ed. 479; Wight v. Police Jury (C.C.A.) 264 F. 705. But it is essential to due process of law that such owners be given notice and opportunity to be heard on that question where, as here, the District was not created by the Legislature, and there has been no legislative determination that their property will be benefited by the local improvement."

In *Fallbrook Irrigation District, et al., v. Bradley, et al.*, 164 U. S. 112, 41 L. Ed. 369, 17 S. Ct. 56, the Court enunciates a similar rule to that laid down in the above case:

> "It has been held in this court that the legislature has power to fix such a district for itself, without any hearing as to benefits, for the purpose of assessing upon the lands within the District the cost of a local public improvement. The legislature, when it fixes the District itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the District, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the 'apportionment of the tax,' i.e. the amount of the tax which he is to pay. Paulsen v. Portland, 149 U. S. 30-41, 13 Sup. Ct. 750-754."

In *Spencer v. Merchant*, 125 U. S. 345, 31 L. Ed. 763, 8 S. Ct. 921, the action of the Legislature of New York was upheld in

making a finding of benefits and levying a tax upon certain property in a town, the Court using the following language:

> "The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so, *and may settle both questions for itself; and when it does so, its action is necessarily conclusive, and beyond review.* * * *The lands might have been benefited by the improvement; and so the legislative determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit, and the property to which it extends, is of necessity a question of fact; and, when the legislature determines it in a case within its general power, its decision must, of course, be final.*" (Emphasis added)

Further at 8 S. Ct. 927:

> "But the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not, but only upon the validity of the assessment, and its apportionment among the different parcels of the class which the legislative has conclusively determined to be benefited."

In *Valley Farms Co. of Yonkers v. Westchester County*, 261 U. S. 155, 164, 67 L. Ed. 586, 43 S. Ct. 261, 263, the New York Legislature created a tax district, provided for the construction and maintenance of a sanitary sewer and to pay for this improvement levied a tax on the property in the District according to its assessed valuation. The Supreme Court upheld the action of the legislature in creating the District and levying the tax and held that the allegations failed to show any action which was arbitrary and an abuse of power. The Court further stated that "all

lands in the District ultimately may be connected with some portion of the sewer and we cannot say they derive no benefits therefrom or that any were included arbitrarily or for improper purposes." 261 U. S. at 164, 43 S. Ct. at 263.

Houck v. Little River Drainage District, 239 U. S. 254, 60 L. Ed. 266, 36 S. Ct. 58, and *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 45 L. Ed. 879, 21 S. Ct. 625, both cite with approval *Spencer v. Merchant*, supra, and *Fallbrook Irrigation District v. Bradley*, supra, and in both cases the action of the legislature was held not in contravention of the Fourteenth Amendment.

The Texas Courts are in accord with the cases which have been cited and have disregarded the particular use to which real property in the District may be adapted. The question of benefits to be derived from an irrigation district has been considered by the courts of this state many times involving both real and personal property, and the courts have in every case found that the property would be benefited either directly or indirectly by being included in the District. Thus it has been held that a railroad company must pay taxes on the land it uses for right-of-way and other operative purposes even though its title consists only of an easement, it having been held that such property was indirectly benefited by an irrigation district. *Texas & P. Ry. Co. v. Ward County Irr. Dist. No. 1*, 112 Tex. 593, 251 S. W. 212.

The owner of a store building was required to pay irrigation taxes on his property although he paid a local water company for all the water that he used. *Hester & Roberts v. Donna Irr. Dist., Hidalgo County, No. 1*, 239 S. W. 992, Writ of Error refused by the Supreme Court of Texas.

Lands which were riparian and property though not receiving a direct benefit, including cities and towns, were held to be

properly included in an irrigation district. *Parker v. El Paso County Water Improvement Dist. No. 1,* 116 Tex. 631, 297 S. W. 737.

Complaint is made in the petition that no hearing was afforded petitioner before the committee of the Texas Senate. (Petition 7.) No such allegation can be found in the complaint. Such complaint here made is extraneous to the record. Moreover, Section 7 of the act creating the District (Appendix A, 22) recites full compliance with the constitutional and statutory provisions for notice.

Under the settled law of this state petitioner was not entitled to a hearing before the legislature or any of its committees. *Browning v. Hooper,* supra. Petitioner tacitly admits by here complaining for the first time that it was deprived of a hearing before a committee of the Senate that it had a hearing before a committee of the House of Representatives, where said bill originated. In any event, being entitled to no hearing at all, petitioner having had a hearing before a committee of the House cannot complain that it was not also afforded a hearing by the committee of the Senate.

The Texas Legislature undoubtedly took into consideration the well known and accepted fact that an adequate supply of water is necessary for the discovery and production of oil, gas and other minerals and that petitioner's property would be benefited by the supply of water which the District would make available to it. Such taxes have in the past been levied upon mineral interests and collected without question as the District Court recognized:

> "These taxes have been levied upon mineral interests and collected without question. * * *Since they can be levied upon railroad rights-of-way, personal property and store buildings and other city property, I see no reason why

mineral interests should be exempted. The property need not receive a direct benefit* * * " (R. 47.)

Cases Relied Upon by Petitioner

The six cases which petitioner cites as being directly in conflict with the decision of the Court of Appeals in this case (Petition 4) are:

Myles Salt Co. v. Iberia & St. Mary Drainage District, 239 U. S. 478, 60 L. Ed. 392, 36 S. Ct. 204;

Gast Realty & Investment Company v. Schneider Granite Company, 240 U. S. 55, 60 L. Ed. 392, 36 S. Ct. 254;

Kansas City Southern Ry. Co. v. Road Improvement Dist. No. 6 of Little River County, Ark., 256 U. S. 658, 65 L. Ed. 1151, 41 S. Ct. 604;

Branson v. Bush, 251 U. S. 182, 64 L. Ed. 220, 40 S. Ct. 113;

Thomas v. Kansas City Southern Ry. Co., 261 U. S. 481, 67 L. Ed. 758, 43 S. Ct. 440;

Wagner v. Leser, 239 U. S. 207, 61 L. Ed. 230, 36 S. Ct. 66.

The first three of such cases do not involve districts created by a state legislature but on the contrary involve districts created by purely local bodies pursuant to delegated authority.

The last three cases cited and relied on by petitioner involve districts created by a state legislature. In the *Branson* and *Wagner* cases, supra, the decision of this Court was contrary to the proposition here asserted by petitioner. In each of such cases this Court held that the Legislature did not act in an arbitrary manner in finding benefits and that the act in question did not violate the Fourteenth Amendment. In the *Thomas* case, supra, this Court held that the tax levied was discriminatory, but such case is not in point because the decision is based upon a

disproportionate valuation of property which resulted in discrimination. It is established by the record in the instant case that no property has been valued or assessed for taxation and no taxes have been levied or collected. (R. 10-11.) Should petitioner feel aggrieved when such steps have been taken, it is afforded ample protection by the laws of Texas which make provision for a hearing before a board of equalization and authorize a defense in a tax suit, in the event petitioner is dissatisfied with the decision of such board of equalization.

The case most strongly relied upon by petitioner is the *Myles Salt Co.* case, supra, which is easily distinguishable from this case. Under the facts in that case it appears that the property of the salt company was located upon an island completely surrounded by water and marshes and cut off and entirely disconnected from the remainder of the District. To all practical intents and purposes such property was not a part of the District and to require it to pay a tax under such circumstances would be equivalent to taxing property entirely outside of and beyond the boundaries of the District. In virtually every case presented to this Court, since the decision in the *Myles Salt Co.* case, supra, this Court has itself seen fit to distinguish such case because of the peculiar facts therein involved.

Conclusion

It is common knowledge that in large areas in the State of Texas, the importance of conservation and the proper use of water is a matter vital to public welfare. The people have declared the public policy in respect to such matters in Article XVI, Section 59 of the Constitution of Texas and directed the Legislature to "pass such laws as may be appropriate thereto." The Legislature, in establishing Valley Acres Water District acted pursuant to such constitutional mandate. Its action in establishing the District, determining the question of benefits and direct-

ing the levy and collection of an ad valorem tax was legal and proper and not subject to court review. The Supreme Court of Texas has so held. *Dallas County Levee District No. 2 v. Looney*, 109 Tex. 326, 207 S. W. 310; *Texas & P. Ry. Co. v. Ward County Irrigation District No. 1*, 112 Tex. 593, 251 S. W. 212 and *Parker v. El Paso County Water Improvement District No. 1*, 116 Tex. 631, 297 S. W. 737.

As a matter of common knowledge, many conservation, reclamation and irrigation districts have been created by special acts of the Texas Legislature. Practically all of these acts have provided for ad valorem taxation upon all of the property situated in the District and such taxes have been levied upon mineral interest and collected without question. (R. 47.)

The real contention of the petitioner is that his leasehold and mineral estates are in reality exempt from all taxation for the purposes contemplated by the provisions of Art. XVI, Section 59 of the Constitution of Texas, and if this contention should be sustained by the Court its effect, from a practical standpoint, upon existing conservation, and reclamation districts in Texas, and upon the outstanding bonds and obligations of such districts and the holders of the same would be disastrous. In fact the entire existing conservation and reclamation system in Texas, from a practical, as well as a legal standpoint, would be overturned and a condition of near chaos would result.

The question of whether lands proposed to be incorporated within an irrigation district will be benefited has reference to the land in its natural state and not to the use to which the land is being put at the time the District is organized. *Texas & P. Ry. Co. v. Ward County Irrigation District No. 1*, supra.

Unquestionably the mineral and leasehold estates of petitioner are a part of *the land within the District*. Before severance all

of such land was subject to taxation in the hands of the owner. Severance from the surface did not change the nature of the property which was still part of the *land* and was still subject to the ad valorem tax in question. The severance merely created additional ownership in the land and fixed the extent of the liability of the owners of such separate interests in the land for all taxes thereafter levied and assessed.

The true situation was fully understood by both the District Court and the Court of Appeals. To a large extent, the decision of the District Court was based upon the interpretation of purely local law by a Texas Federal Judge and upon matters of such common and general knowledge that judicial notice was taken of such facts. The Court of Appeals did not disagree with any portion of the decision of the District Court and accordingly under the decision of *Steele v. General Mills*, 329 U. S. 433, 91 L. Ed. 402, 67 S. Ct. 439, such decision should be left undisturbed and the writ should be denied.

JOHN D. MCCALL
MERCANTILE SECURITIES BLDG.
DALLAS, TEXAS

HARRY L. HALL
MISSION, TEXAS
Counsel for Respondents

APPENDIX A

VALLEY ACRES WATER DISTRICT

Chapter 261*

H. B. No. 725

An Act creating a conservation and reclamation district under the provisions of Section 59, Article XVI of the Constitution to be known as "Valley Acres Water District"; defining its powers, enacting other provisions relating to the subject; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Under and pursuant to the provision of Article XVI, Section 59 of the Constitution, a conservation and reclamation district within the counties of Hidalgo and Cameron, is hereby created and incorporated, to be known as "Valley Acres Water District" hereinafter sometimes referred to as the "District." The boundaries thereof shall be as follows:

BEGINNING at the intersection of the West Right-of-Way line of the Main Canal of the Willacy County Water Control & Improvement District No. 1, with the South Right-of-Way line of the North Floodway of the International Boundary & Water Commission:

THENCE Southerly along the West Right-of-Way line of said Willacy County Water Control and Improvement District No. 1, Main Canal to Mile 12 of the North Capisallo District of the lands of the American Rio Grande Land & Irrigation Co.;

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*Vernon's Rev. Civ. St. foll. art. 8197f.

THENCE Westerly along said Mile 12 to the east Right-of-Way line of the West Levee of above stated North Floodway;

THENCE Northerly along the East Right-of-Way line of said West Levee of said North Floodway to Mile 14½ of lands of the American Rio Grande Land & Irrigation Co.;

THENCE along the Mile 14½ of the North Capisallo District of lands of American Rio Grande Land & Irrigation Co., Easterly to the East Right-of-Way line of the East Levee of International Boundary and Water Commission North Floodway;

THENCE Northerly and Easterly along the Easterly and Southerly Right-of-Way line of said North Floodway to the place of BEGINNING, except:

(a) All land in the right-of-way of the International Boundary and Water Commission acquired for flood levees, containing 133.13 acres, more or less; and

(b) The following described land in the North Capisallo District of the lands of the American Rio Grande Land and Irrigation Company:

All of Farm Tract No. 2304, except the S. 5.77 acres being	27.73 acres
The North 8.31 acres of the West. 15.92 acres of Farm Tract No. 2312, being	8.31 acres
All of Farm Tract No. 2340 except that part in the flood-way-levee of the International Boundary and Water Commission, being	46.38 acres
All of Farm Tract No. 2346, containing	31.08 acres
All of Farm Tract No. 2347, containing	6.92 acres
The Southwest 3.77 acres of Farm Tract No. 2359, containing	3.77 acres
Total	124.19 acres

The above lands described in Paragraph (b) hereof being more particularly described in that certain deed dated September 25, 1950 and recorded in Volume 699, page 295, of the Deed Records of Hidalgo County, Texas.

Total of land to be excepted under Paragraphs (a) and (b), 257.32 acres.

Leaving a total acreage within the above boundary in said Conservation and Reclamation District of 10,202.58 acres, more or less.

Sec. 2. The District shall have and exercise, and is hereby vested with all of the rights, powers, privileges and duties conferred and imposed by the general laws of this State now in force or hereafter enacted, applicable to Water Control and Improvement Districts created under authority of Section 59, Article XVI of the Constitution, but to the extent that the provisions of any such general laws may be in conflict or inconsistent with the provisions of this Act the provisions of this Act shall prevail. All such general laws are hereby incorporated by reference with the same effect as if incorporated in full in this Act.

Sec. 3. The management and control of the District is hereby vested in a board of directors which shall have all of the powers and authority conferred and imposed upon Board of Directors of Water Control and Improvement Districts organized under the provisions of Chapter 25, Acts of the Thirty-ninth Legislature passed in 1925 and Amendments thereto, as incorporated in Title 128, Chapter 3A of Vernon's Civil Statutes of the State of Texas and amendments thereto. The Board of Directors shall be composed of five (5) members who shall have the same qualifications as Directors of Water Control and Improvement Districts. In the event, and to the extent that any

of the provisions of the general laws referred to in this Section are in conflict with or inconsistent with any of the provisions of this Act relating to the powers, authority and duties of the Board of Directors and its members, the provisions of this Act shall prevail. The Board of Water Engineers of the State of Texas is hereby authorized and empowered to appoint five (5) persons qualified under the law to serve as directors of the District until their successors shall have been duly elected and shall have qualified. The first election of directors shall be held on the second Tuesday in January, 1952, in accordance with the provisions of Section 37 of Chapter 25, Acts of the Thirty-ninth Legislature, as amended by Section 6 of Chapter 107 of the Acts of the First Called Session of the Fortieth Legislature, as carried forward in Article 7880-37 of Vernon's Civil Statutes of the State of Texas, and laws amendatory thereof and supplemental thereto.

Sec. 4. Bonds may be issued by the District pursuant to a resolution or resolutions adopted by the board of directors, when the proposition authorizing the bonds shall have first been submitted to the property tax-paying voters of such District and adopted by not less than a majority of such qualified voters voting at such election. The District may issue bonds thus authorized for any and all purposes permitted to Water Control and Improvement Districts, including, but without limitation of purposes not specified, the following:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or of irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage or navigation or in aid thereof.

Such bonds may be issued to mature serially or otherwise as may be determined by the board of directors, the maximum maturity date not to exceed forty (40) years, and may be sold at a price and under terms determined by the board of directors to be the most advantageous reasonably obtainable, provided that the interest cost to the District, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum. Interest to accrue on the bonds for a period not to exceed three (3) years from their date, may be appropriated and paid from the proceeds from the sale of the bonds.

No bonds shall be issued by the District until the record supporting such bonds and the bonds shall first have been approved by the Attorney General. Bonds thus approved shall be registered in the office of the Comptroller of Public Accounts. Bonds thus approved by the Attorney General after sale by the District shall be fully negotiable instruments and shall be incontestable.

The bonds of the District may be refunded, without the necessity of an election, either by the issuance and delivery to holders of refunding bonds in lieu of the outstanding bonds, or through the sale of refunding bonds and the use of the proceeds for retiring the outstanding bonds, provided that the average annual interest rate of the refunding bonds, calculated to maturity shall not be greater than the average interest rate of the bonds refunded, calculated to maturity, and provided the maximum maturity of the refunding bonds shall not exceed forty (40) years.

The resolution or resolutions authorizing the issuance of the bonds may contain such covenants which in the discretion of the Board of Directors are necessary to assure the creation and maintenance of proper reserves and the payment of the

principal of and interest on the bonds. Provisions of the law pertaining to the issuance of bonds by Water Control and Improvement Districts when not in conflict with the provisions of this Act shall be applicable.

Sec. 5. Whenever bonds shall have been voted within the District in accordance with the provisions of law the Board of Directors shall levy a continuing ad valorem tax upon all property within the District sufficient in amount to pay the interest on such bonds and the principal thereof as such interest and principal respectively mature and to create and maintain such reserves as may be required in the resolution or resolutions authorizing the issuance of such bonds, and the Board of Directors of the District shall annually determine and fix, or cause to be determined and fixed the rate of ad valorem tax to be assessed and collected for such year upon all property within said District in an amount sufficient for such requirements of principal and interest and to create and maintain such reserves, including an amount sufficient to pay the expenses of assessing and collecting such tax, and for anticipated delinquencies in tax payments.

Sec. 6. The District shall have authority to acquire all property real and personal within or outside of the District which within the discretion of the Board of Directors is needed in accomplishing the objectives of the District and to facilitate the acquisition of property it shall have all of the powers of eminent domain available to water control and improvement district under the general law.

Sec. 7. Proof of publication of the notice required by the Constitution prior to the enactment of local and special laws has been made in the manner and form prescribed by law. The time, form and manner of giving said notice is hereby found to

be sufficient to comply with the Constitution and such notice is hereby approved and ratified.

Sec. 8. When authorized by an election called and held as provided by laws relating to Water Control and Improvement bond election, (except that a petition shall not be required) the Board of Directors of the District may levy an ad valorem tax against all taxable property in the District for the purpose of maintaining and operating the works and facilities of the District.

Sec. 9. Ad valorem taxes for the payment of bonds and interest thereon and for the payment of maintenance and operation costs, if voted prior to October 1, 1951, may be levied for the year 1951.

Sec. 10. The Legislature hereby exercises the authority conferred upon it by Section 59, Article XVI of the Constitution, and declares that the District created by this Act is essential to the accomplishment of the purposes of said Constitutional provision, including the conservation and utilization of water, finds that all of the land included therein will be benefited thereby, and declares the District to be a governmental agency, a body politic and corporate, and a municipal corporation.

Sec. 11. The facts that the creation of said District will result in material benefits to the State of Texas, to the territory included therein, and to the territory in the vicinity thereof, and will promote effectively the conservation and use of water of the State of Texas, create an emergency and an imperative public necessity requiring that the Constitutional Rule that bills be read on three several days in each House be suspended, and

such Rule is hereby suspended, and that this Act take effect from and after its passage, and it is so enacted.

Passed the House, April 25, 1951: Yeas 129, Nays 0; passed the Senate May 3, 1951: Yeas 31, Nays 0.

Approved May 18, 1951.

Effective May 18, 1951.

APPENDIX B

ARTICLE XVI, SECTION 59a, CONSTITUTION OF TEXAS

Sec. 59a. The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the Constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy (may) be prescribed by

law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such District and the proposition adopted. (Sec. 59, Art. 16, adopted election Aug. 21, 1917; proclamation October 2, 1917.)

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